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IN THE

Supreme Court of the United States

OCTOBER TERM, 1959

No. 446

THE E. INGRAHAM COMPANY, *Petitioner*

v.

BOARD OF TAX REVIEW OF THE TOWN AND CITY OF BRISTOL, *Respondent*

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ERRORS OF THE STATE OF CONNECTICUT

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Petitioner prays that a writ of certiorari issue to review the decision of the Supreme Court of Errors of the State of Connecticut entered in the above entitled case on April 28, 1959, which became final against the petitioner when its motion for reargument was denied on June 3, 1959.

CITATION TO OPINION BELOW

The opinion of the Supreme Court of Errors of the State of Connecticut is reported in 146 Connecticut 403, 151 A. 2d 700, and is printed in Appendix B hereto *infra*, page 4a.

JURISDICTION

This case was presented to the Supreme Court of Errors of the State of Connecticut upon a stipulation of facts and upon questions stipulated by the parties and reserved to that Court, in accordance with state practice, for consideration and advice with the approval of the trial court, the Court of Common Pleas in and for Hartford County. The decision of the Supreme Court of Errors adverse to the petitioner upon such reservation was entered on April 28, 1959 (R. following page 14; Appendix B, *infra*, p. 4a). Petitioner's motion for reargument was denied on June 3, 1959 (Supplemental Record). Petitioner's application to this Court for an extension of time within which to appeal or file petition for a writ of certiorari was filed on September 1, 1959, and was granted, the time for filing petition for a writ of certiorari being extended to and including October 1, 1959 by order of this Court dated September 2, 1959 (Mr. Justice Brennan).

The federal question with respect to denial to petitioner of due process of law under the Fourteenth Amendment was argued in the briefs and orally to the Supreme Court of Errors and is necessarily involved in and is presented by the opinion of that Court denying petitioner any relief under Section 1801 of the General Statutes of Connecticut, hereinafter discussed. The constitutionality of Public Act No. 673 of 1957, under both the federal and state constitutions, hereinafter discussed, was expressly reserved for decision of the Supreme Court of Errors in the questions reserved for decision by the parties (Questions 2 through 5, R. 11).

The jurisdiction of this Court is invoked under 28 U.S.C., Section 1257 (3).

QUESTION PRESENTED

Is due process of law denied to a taxpayer by a decision of a State Court which is founded on an admittedly illegal method or formula of tax assessment and which disallows any adjustment of the assessment or recovery of the illegal tax imposed by invoking another State law and placing such a construction thereon as to completely and effectively deny any and all remedy for the enforcement of the taxpayer's right either to obtain any adjustment of the assessment or to recover the illegal tax imposed?

STATUTES INVOLVED

The statutory provisions involved are the General Statutes of Connecticut, Revision of 1949, Sections 1800 and 1801 (Revision of 1958, Sections 12-118 and 12-119), which are printed in Appendix A, *infra*, pp. 1a-2a, and Public Act No. 673 of the General Assembly of the State of Connecticut, 1957, Appendix A; *infra*, p. 3a.

STATEMENT

Petitioner, a corporation, engaged in manufacturing in the Town and City of Bristol, Connecticut, and owners of both real and personal property situated therein, filed a civil action in the Court of Common Pleas for Hartford County, Connecticut, seeking, among other things, a reduction of the assessment of its personal property on the tax list of October 1, 1955, to its lawful value, for a judgment for reimbursement of taxes overpaid and for other relief (R. 1-4). By

stipulation of the parties the Court of Common Pleas reserved the questions raised by said action for the consideration and advice of the Supreme Court of Errors of the State of Connecticut (R. 6-11).

The facts before the Supreme Court of Errors are contained in the aforementioned stipulation (R. 6-11), and essentially are as follows:

In 1953, the assessors of the respondent, the Town and City of Bristol, pursuant to statute (Section 1737 of the General Statutes of Connecticut, Revision of 1949) revalued all property in the Town for the purpose of assessment. The assessors employed certain formulas and methods agreed upon by them to determine the taxable value of all taxable property in the Town, both real and personal, including the property of petitioner. After determining the fair market value of all property by these formulas and methods, the assessors set all motor vehicles, including those of petitioner, on the Grand List of October 1, 1955, at 100% of their fair market values; they set all other personal property, including that of petitioner, on the Grand List at 80% of its fair market value; and they set all real property, including that of petitioner, at 50% of its fair market value.

In 1954, and 1955; the year involved in this case, the assessors used the same formulas and methods in arriving at the fair market values of taxable property as were used in 1953. After arriving at these fair market values, motor vehicles were placed on the Grand List at 100% of such value, other personal property at 90% of such value (10% higher than in 1953) and real estate at 50% of such value.

Petitioner, within the time and in the manner provided by law, appealed to the Board of Tax Review, claiming that the assessors erred in setting its motor vehicles, personal property and real property on the Grand List at differing percentages of fair market value in clear violation of existing state law but the Board made no changes.

The foregoing actions by the assessors and the Board, using the aforementioned differing percentages of valuation for motor vehicles, other personal property and real property, caused the property of petitioner to be placed on the Grand List of October 1, 1955 at a total assessed valuation of $5,767,300, which amount represented 4.739% of the assessed value, before exemptions, of all the taxable real and personal property in the Town, and 4.914% after exemptions. The true and actual fair market value of all of the said property of the petitioner as of that date was $7,529,750, which represented 3.633% of the true and actual value of all taxable property in the Town (R. 8, 9).

The same mill rate was applied by respondent to the assessment of both real and personal property on the tax list, or Grand List.

An appeal was taken by petitioner from the 1954 Grand List, using 1954 figures and based substantially on the same facts above stated, pursuant to the provisions of Sec. 1800 of the General Statutes of Connecticut (Appendix A, p. 1a). Petitioner went forward on that appeal on a Reservation to the Supreme Court of Errors of Connecticut. The decision of the Supreme Court of Errors was handed down May 17, 1957 (144 Connecticut 374, 132 A.2d 563) and the full text

of the opinion appears in Appendix C hereto, pp. 10a. In substance the Supreme Court of Errors ruled that the assessors had "acted contrary to the statutes and hence illegally * * *". The Court, however, expressly overruled its earlier decision granting a taxpayer relief under such circumstances (*Randell v. Bridgeport*, 1893, 63 Conn, 321, 28 A. 523), and denied the petitioner relief under Sec. 1800, saying:

> "We cannot * * * construe it as expressing a legislative intent to confer upon the Court the power to adjust inequalities in the assessed value of property, when those values have been reached by applying a percentage of less than 100% of the actual values of the property assessed, in direct violation of the mandate contained in Sections 1738 and 1047d. (General Statutes)." (Appendix C, p. 17a).

Following this decision, and during the same year, the petitioner, pursuant to the provisions of Section 1801 of the General Statutes (Revision of 1958, Section 12-119) (Appendix A, p. 2a), then instituted the present action in the Court of Common Pleas (R. 1-4). Similar actions of five other manufacturing corporations in Bristol are pending in the Court of Common Pleas and by stipulation of the parties those actions will abide by the final judgment entered in this case (R. 10).

Later in the same year, 1957, and during the pendency of this action, and of the five similar actions of the other corporations in Bristol, the legislature of the State of Connecticut passed Public Act No. 673 (Appendix A, *infra*, p. 3a), Section 1 of which purports to validate retroactively all assessments theretofore made, though of varying percentages of true and

actual value. The Act provides that: "* * * all procedures followed and all action taken with respect thereto by said assessors and boards of tax review are validated and shall be legal and binding as though such procedures followed and such action taken were in accordance with law; * * *". It further purports to apply to all appeals pending or to be brought under the aforementioned Sections 1800 and 1801 of the General Statutes of Connecticut, *supra*, which, in terms, of course, applied to the six pending suits under Sec. 1801, here involved.

Pursuant to Stipulation for Reservation of the parties hereto (R. 6-11) and approved by the Court of Common Pleas (R. 11), the questions raised in this action were reserved for consideration and advice of the Supreme Court of Errors of Connecticut. Five questions were so reserved for advice, the first being whether petitioner (plaintiff) was entitled to relief under Section 1801, and the other four relating to the constitutionality, under both the state and federal constitutions, of the aforementioned Public Act No. 673 of 1957. The opinion of the Supreme Court of Errors (R. 15, Appendix B, p. 4a) answered only the first question, denying relief to petitioner under Section 1801, and refrained from answering the remaining reserved questions with respect to the constitutionality of Public Act No. 673. Petitioner filed a timely motion for reargument which was denied on June 3, 1959 (Supplemental Record).

REASONS FOR GRANTING THE WRIT

1. The decision of the Supreme Court of Errors in the instant case (Appendix B, *infra*, p. 4a), while recognizing that the assessment of the petitioner's

property was unlawful and illegal under its earlier decision, 144 Connecticut 374, 132 A.2d 563 (Appendix C, *infra*, p. 10a), nevertheless denies any relief or remedy to the petitioner to recover back any part of the tax levied on such illegal and unlawful assessment. This result is reached by invoking a harsh and strained application of Section 1801 of the General Statutes of Connecticut (Appendix A, *infra*, p. 2a), and wholly disregarding the purpose and intent of such statute to afford the taxpayer relief upon principles of "justice and equity". It is a well recognized principle that a State Court, although vested with an almost absolute power to construe and apply its own statutes, must nevertheless refrain from placing a construction on any statute, the effect of which, would deprive entirely a person's remedy for the enforcement of a right. This would be a denial of due process under the Fourteenth Amendment. *Brinkerhoff-Faris Trust & Savings Co.* v. *Hill*, 281 U.S. 673 (1930).

Petitioner's holdings are substantial and represent 3.633% of all taxable real and personal property in Bristol (R. 9). In making the assessment, later declared to be unlawful and illegal, the assessors determined upon a valuation equal to varying percentages of petitioner's property, assessing motor vehicles at 100%, all other personal property at 90% and real property at 50%. As thus assessed, petitioner's property was included in the tax list for the Town together with all other taxable property based on valuations reached by application of the same formula. In levying the tax thereon, the assessors applied the same mill rate to all property on the list. Although, as above stated, the true and actual value of petitioner's property, of all classifications, was only 3.633% of all tax-

able property in the Town, under this illegal method of assessment, the assessed value of petitioner's property was raised to 4.914%, of the total assessed value of all property in Bristol, after exemptions (R. 9). While the present record does not disclose the amount of the additional tax imposed by this method of assessment and this amount would have to be determined upon a hearing of the issue raised by the petitioner's complaint, it is patently clear that this illegal method of assessment required petitioner to bear a disproportionate share of the total tax assessed for the support of the Town of Bristol for that year. In other words, it is obvious that the method of assessment contrived by the assessors and the Board placed a larger and disproportionate burden of taxation on taxpayers owning substantial amounts of personal property than upon owners of real estate who were assessed at only 50% of actual value. Had all property been assessed at 100%, it, of course, follows that the tax burden on owners of personal property would be appreciably reduced. The scheme of personal property tax assessment thus devised hit directly at the six manufacturing corporations here involved.

2. This problem, even in the Town of Bristol, is not peculiar to the petitioner. The record shows that five other manufacturing corporations in Bristol have filed similar actions and by stipulation of the parties the decision in this case will control ultimate disposition of the same unlawful assessment against these taxpayers (R. 10). Moreover, the problem is of far greater moment than merely to the Town of Bristol or the State of Connecticut, as appears from the cases arising in many other states involving similar attempts to assess unfairly and disproportionately property for

taxation. See: In *State* v. *City of Evansville*, 261 Wisc. 599, 53 NW 2d 795; *Bemis Brothers Company* v. *City of Claremont*, 98 NH 446, 102 A.2d 512; *Sears Roebuck & Company* v. *City of Presque Isle*, 107 A.2d 475; *Hutchins et al* v. *Howard et al*, 211 Ga. 830; *Booneville National Bank* v. *Schlotzhauer, et al.*, 317 Mo. 1298, 298 SW 732, 55 A.L.R. 489; *Pierce* v. *Green*, 229 Iowa 22, 294 NW 237, 131 A.L.R. 335; and *Baldwin Construction Co.* v. *Essex County Board of Taxation*, 16 N.J. 329, 108 A.2d 598 (Opinion by Mr. Justice Brennan).

3. Petitioner first exhausted its administrative remedy by appealing to the Board of Review but relief was denied. Then, pursuant to provisions of Section 1800 of the General Statutes of Connecticut it appealed to the Court of Common Pleas. The questions raised were reserved for the consideration and advice of the Supreme Court of Errors in accordance with establishing Connecticut practice and that Court by its decision of May 17, 1957, 144 Connecticut 374, 132 A.2d 536 (full text appearing at p. 10a, Appendix C) struck down the assessment as unlawful and illegal but denied petitioner any relief therefrom on the ground that the statute, Section 1800, did not "confer upon the Court the power to adjust inequalities in the assessed values of property when those values have been reached by applying a percentage of less than 100% of the actual values of the propertly assessed". Following this decision petitioner attempted to obtain relief by a different course which led to the filing of the instant action. This is a civil action under the provisions of Section 1801 of the General Statutes, (the full text of which appears at p. 2a of Appendix A) the clear intendment of which is to afford taxpayers full redress on principles of "justice and

equity" from any and all inequities arising when property is wrongfully assessed. Nevertheless, the Court now has again denied petitioner any relief, holding that although the assessment was recognized as being illegal and unlawful under its earlier decision, *supra*, petitioner still has no remedy under Section 1801 to obtain either an adjustment of the assessed values of its property or to recover back any overpayment of taxes thereunder. The reasons now asserted by the Court were that Section 1801 applied only to assessments which were "manifestly excessive", by which the Court obviously meant only assessments in excess of 100% of actual and true value. This strained application of the state statute deprived petitioner, and all other taxpayers in the same situation, of any right of recovery of taxes computed on any method or formula, however disproportionate and unjust, if such assessment was below 100% of actual value. The decision accordingly leaves all taxpayers without any remedy or right to relief from any scheme or device of assessment which may be contrived and no matter how disproportinate in degree between the varying classes of property, if any of the assessments involved should be made for less than true and actual value. This denial of any remedy to recover taxes illegally assessed or overpaid clearly deprives the petitioner of substantial property rights without due process of law as guaranteed by the Fourteenth Amendment. *Brinkerhoff-Faris Trust and Savings Co.* v. *Hill, supra; Greene* v. *Louisville & Interurban R. Co.*, 244 U. S. 499, (1917); and *Ward* v. *Board of County Com'rs.*, 253 U. S. 17 (1920).

> "* * * while it is for the state courts to determine the adjective as well as the substantive law of the state, they must, in so doing, accord the parties

due process of law. Whether acting through its judiciary or through its Legislature, a state may not deprive a person of all existing remedies for the enforcement of a right, which the state has no power to destroy, unless there is, or was, afforded to him some real opportunity to protect it." (*Brinkerhoff-Faris Trust and Savings Co.*, 281 U. S. at p. 682).

CONCLUSION

The denial of any remedy to a taxpayer to recover a illegally imposed tax, in the situation in this case, is a matter of public interest and concern far greater than the injustice to this particular litigant. The principles involved affect the tax structure of most of the states, municipalities and towns throughout this country. Due process of law in this aspect of the administration of *ad valorem* tax assessment laws should be a concern of this Court whose guidance will be of benefit in all existing problems in this field, as well as those which will undoubtedly arise in the future in the ever-increasing pressure for more and more tax revenues to meet expanding needs and rising costs of government.

While petitioner recognizes this Court has repeatedly stated that it would not consider the constitutionality of a state law unless that issue was expressly before and passed upon by the state court, nevertheless, the statute herein referred to which attempts to validate retroactively the illegal tax assessments in question and expressly bars any relief to the taxpayer affected thereby, Public Act No. 673 of 1957, *supra*, is such a flagrant abuse of any conception of due process of law, that it should not go unnoticed by this Court. In the event that certiorari is granted and this case is

ultimately remanded, petitioner will be confronted by the bar of this statute. In order to terminate this litigation and to do full and complete justice between the parties consideration should now be given to the serious constitutional question raised thereby.

For this and the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted.

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